

Jury Trial - Volume 5 - 10/17/2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 05-81165

KHAOPHONE SYCHANTHA,

Defendant.

_____/

JURY TRIAL - VOLUME 5
BEFORE THE HONORABLE SEAN F. COX
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Thursday, October 17, 2024

APPEARANCES:

FOR THE PLAINTIFF:

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1 **APPEARANCES CONTINUED:**

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Craig A. Daly, PC

(On behalf of David Sok)

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5 **ALSO PRESENT:** Special Agent Brian Manns
Yannie Andrus - Government Assistant
6 Marissa Mandernach - Defense Assistant

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1 Detroit, Michigan

2 Thursday, October 17, 2024

3 8:50 a.m.

4 * * *

5 THE CLERK: All rise.

6 The United States District Court for the Eastern
7 District of Michigan is now in session. The Honorable Sean Cox
8 presiding.

9 You may be seated.

10 The Court calls the matter of United States of
11 America versus Khaophone Sychantha, Case Number 05-81165.

12 Counsel, please state your appearances for the
13 record.

14 MR. NORWOOD: Good morning, your Honor. Jason
15 Norwood on behalf of the United States.

16 MR. MARTIN: And Patrick Martin on behalf of the
17 United States.

18 THE COURT: Good morning.

19 DEFENDANT SYCHANTHA: Good morning. Khaophone
20 Sychantha, defendant.

21 THE COURT: Good morning.

22 MR. STEINGOLD: Good morning, your Honor. David
23 Steingold, advisory counsel.

24 THE COURT: All right. Please have a seat.

25 Mr. Daly was here earlier, and he's meeting with

1 Mr. Sok right now on the issue whether Mr. Sok's going to
2 testify or not. We'll find out shortly.

3 Oh, Mr. Daly is back. Great.

4 And yesterday afternoon, as I understand, I received
5 the joint agreed upon jury instructions from the Government and
6 the defense, is that correct?

7 MR. STEINGOLD: That's correct, your Honor.

8 THE COURT: We met this morning, and it's my
9 understanding we're going to re-work the verdict form as to
10 Counts One and Three, is that correct?

11 MR. NORWOOD: That is correct, your Honor.

12 DEFENDANT SYCHANTHA: Yes, your Honor.

13 THE COURT: Okay. Let me know when the verdict form
14 has been finalized.

15 DEFENDANT SYCHANTHA: Your Honor, can I put something
16 on the record?

17 THE COURT: Just give me a sec.

18 DEFENDANT SYCHANTHA: Okay.

19 THE COURT: Okay. Sir?

20 DEFENDANT SYCHANTHA: Yes?

21 THE COURT: You wanted to put something on the
22 record.

23 DEFENDANT SYCHANTHA: Yeah.

24 I would like to address the Court.

25 Judge Cox, I would like for you to remove yourself

1 from my case. You're really bias. I have asked for this
2 attorney to be removed from my case. He refused to file any
3 motion. I told this attorney that I was kidnapped from Canada
4 without having an extradition hearing. I have a right to this
5 hearing. This is a violation of my due process right.

6 I would like to appeal your decision not to appoint
7 me a counsel to the Sixth Circuit court.

8 That's it.

9 THE COURT: Okay. Well, first of all, the time for
10 filing motions has long passed. And the second issue is, I see
11 no basis for recusing myself from your case.

12 DEFENDANT SYCHANTHA: I have a case law here, Adam
13 versus United States. Constitution does not force a lawyer
14 upon a defendant.

15 THE COURT: Well, I understand you have something you
16 want to file. And, of course, it will be filed.

17 DEFENDANT SYCHANTHA: Okay.

18 THE COURT: And why don't you give that to our -- I
19 understand you have a document you want to file?

20 DEFENDANT SYCHANTHA: No, not yet. I just want to do
21 it oral.

22 THE COURT: Do it orally. Okay. It's your choice.
23 Mr. Daly, are we ready to proceed?

24 MR. DALY: Yes, your Honor.

25 THE COURT: All right. Let's bring up Mr. Sok.

1 And when he's up, please let me know, okay?

2 MR. DALY: Okay.

3 (Off the record at 8:56 a.m.)

4 (Back on the record at 9:03 a.m.)

5 THE CLERK: All rise.

6 Court is now in session.

7 THE COURT: All right. Calling the matter of In RE:

8 David Sok and Mr. Daly.

9 Good morning.

10 MR. DALY: Good morning, Judge.

11 THE COURT: Good morning, Mr. Sok.

12 THE WITNESS: Good morning.

13 THE COURT: Everyone, have a seat.

14 And it's my understanding Mr. Daly had the
15 opportunity to speak with your client yesterday. You filed a
16 short memo, brief, motion, last night.

17 And again, it's my understanding you had an
18 opportunity to meet with your client this morning, is that
19 fair?

20 MR. DALY: Yes.

21 THE COURT: All right. I'm ready to proceed.

22 MR. DALY: So let me say this. Consistent with we're
23 going to take this one-step-at-a-time approach, let me say
24 this, that yesterday when we came to court, we were here for
25 one, and only one purpose, and that was the Court's order

1 compelling Mr. Sok to testify pursuant to the Government's
2 application. And that was grounded in the expectation that
3 Mr. Sok would assert his Fifth Amendment right.

4 And I indicated to the Court, Mr. Sok said he's not
5 asserting his Fifth Amendment right to that order, but he would
6 defend on the grounds of double jeopardy and the Kastigar
7 letter, and then he mentioned also his safety.

8 After those proceedings were coming to a conclusion,
9 the Government, in essence, changed horses right before the end
10 of the race and brought the issue of the subpoena up, which we
11 had not been defending against. We were defending against the
12 order.

13 The Government's motion to compel him and -- the
14 application, and the motion to hold him in contempt was all
15 based on that order.

16 Last night, you issued an order. In that order, you
17 said -- and correct me at any time.

18 THE COURT: Well, it speaks for itself.

19 MR. DALY: Yes, it does.

20 But, in essence, you said that the order to compel
21 his testimony, which was the title, didn't in fact compel him
22 to testify and that you would not hold him in contempt under
23 that order if he refused to testify.

24 I think that that's an accurate statement.

25 But then you went on to say that, under the subpoena,

1 if he refused to testify, that you would hold him in contempt
2 and subject him to criminal contempt, is what basically you've
3 said.

4 So, taking it step-by-step, Mr. Sok and I have
5 discussed his different options, and he is going to refuse to
6 testify, but he's going to refuse to testify on his Fifth
7 Amendment rights with regards to the subpoena.

8 Why?

9 Because he can still be prosecuted if he testifies by
10 the State of Michigan, Wayne County Prosecutor's Office, and
11 the Canadian authorities.

12 So with regards to the subpoena and your order, we're
13 asking that you don't hold him in contempt, that he has a valid
14 basis, which is his Fifth Amendment right to refuse to testify
15 under the subpoena.

16 So you may question, if you want, Mr. Sok, but that's
17 what we discussed.

18 My understanding is that Mr. Sok will refuse to
19 testify based on his Fifth Amendment right.

20 THE COURT: Okay. Anything further in response,
21 Mr. Martin?

22 MR. MARTIN: No, your Honor, unless the Court has
23 specific questions for the Government.

24 THE COURT: I don't.

25 Listening to Mr. Daly just confirms what everyone

1 suspected. He's an excellent, excellent lawyer, but we're
2 going to proceed as I outlined in the order I issued last
3 night.

4 And, Mr. Sok, could you raise your right hand to the
5 best you can?

6 THE WITNESS: Yes.

7 (Oath administered at 9:08 a.m.)

8 **DAVID SOK,**

9 being first duly sworn to tell the truth, was
10 examined and testified upon his oath as follows:

11 - - -

12 THE COURT: And, sir, could you give us your full
13 name?

14 THE WITNESS: David Sok.

15 THE COURT: Yesterday, under oath, you told me that
16 you would not testify in this trial and why.

17 I will give you another opportunity to honor the
18 Court's subpoena and order. I'm ordering you to answer any
19 questions posed to you by the assistant U.S. attorneys, it's my
20 understanding Mr. Martin, as well as by Mr. Sychantha in this
21 case.

22 Sir, will you do so?

23 THE WITNESS: No.

24 THE COURT: Therefore, sir, I find that you are in
25 contempt of court.

1 And a little asterisk on that.

2 Mr. Daly, I didn't -- don't like how the issue played
3 out.

4 MR. DALY: I don't either, Judge.

5 THE COURT: And I've done my best to try to make the
6 best decision possible.

7 MR. DALY: Could you ask Mr. Sok the reason why he is
8 refusing to testify?

9 THE COURT: I did yesterday.

10 MR. DALY: Yes, but now we're on different grounds.

11 THE COURT: I'll tell you what. If you wish, you may
12 do so.

13 MR. DALY: Thank you.

14 Mr. Sok, you've indicated that you refuse to testify.
15 The Judge has indicated that he's going to hold you in contempt
16 under the subpoena if you do so.

17 Do you understand that?

18 THE WITNESS: Yes.

19 MR. DALY: And you're refusing to testify on what
20 grounds?

21 THE WITNESS: My Fifth Amendment rights.

22 MR. DALY: Okay. Would you also assert the other
23 rights that you have previously, the double jeopardy rights and
24 your right under the Kastigar letter?

25 THE WITNESS: Yes.

1 MR. DALY: Okay. Thank you, Judge.

2 THE COURT: All right. Very good.

3 Yes, sir?

4 MR. MARTIN: Your Honor, may I inquire just a few
5 questions?

6 THE COURT: Any objection?

7 MR. DALY: Yeah, I object. I don't know what the
8 purpose of the questions are, Judge.

9 THE COURT: What would be the purpose of the
10 questions?

11 MR. MARTIN: Your Honor, like any witness, and the
12 purpose would be to clarify for the record that he has a
13 certain basis that he's asserting, but whether he has the
14 knowledge that, based upon the Court's orders, that he in
15 fact -- at least the Court has determined a certain basis to
16 not be actually relevant in this case.

17 And I think because defense counsel has been allowed
18 to inquire of his own client, the Government, as a part of this
19 proceeding, should be allowed to cross-examine the witness on
20 those answers that he just gave for the record.

21 MR. DALY: I disagree.

22 THE COURT: Based upon what?

23 MR. DALY: The right that Mr. Sok has not to testify,
24 what grounds, what privileges he may assert are reserved for
25 him. The Government has no stake in him asserting his

1 constitutional rights. Whether they agree with him or not
2 doesn't really matter.

3 But the only thing that's important is, is he going
4 to testify and why is he not testifying? The record is clear
5 in that regard.

6 So for the Government to try to cross-examine him on
7 the assertion of his rights is not proper at all, Judge.

8 THE COURT: Okay. I've made a finding --

9 MR. DALY: Yes.

10 THE COURT: -- all right?

11 And it's time to move on with the trial.

12 MR. DALY: What's next besides the trial?

13 What about Mr. Sok?

14 THE COURT: Nothing right now.

15 MR. DALY: Okay. Then I have two requests; that you
16 hold your order of contempt in abeyance, first of all, so that
17 we can appeal. This is a final order, contempt order, so that
18 we can appeal.

19 And, secondly, that you unseal your order, because
20 that would be the basis along with what has transpired in court
21 for the appeal.

22 Those are my two requests.

23 THE COURT: Well, one step at a time.

24 MR. DALY: Sure.

25 THE COURT: File a request.

1 MR. DALY: Okay. I will do so.

2 THE COURT: That gives me an opportunity to study it,
3 okay?

4 MR. DALY: Yes.

5 THE COURT: All right. I think we're all good now.

6 MR. DALY: Thank you very much. Have a good day.

7 THE COURT: Okay. Mr. Sok, thank you very much.

8 THE WITNESS: Thank you.

9 THE COURT: So the jury will be coming out in about
10 20 minutes.

11 And where do we stand now with the case, the
12 Government's presentation of its proofs?

13 MR. NORWOOD: Your Honor, at this point, the
14 Government will not be calling any additional witnesses and we
15 will rest.

16 THE COURT: Okay. All right.

17 DEFENDANT SYCHANTHA: I call Brian Manns back to the
18 stand, your Honor.

19 THE COURT: Call who?

20 DEFENDANT SYCHANTHA: Brian Manns.

21 THE COURT: Well, you have the opportunity to present
22 a case --

23 DEFENDANT SYCHANTHA: Yeah.

24 THE COURT: -- okay?

25 DEFENDANT SYCHANTHA: Yeah.

1 THE COURT: So I -- so the Government is going to
2 come out -- the jury is going to come out. And it looks like
3 the Government is going to say they rest. And I'm going to
4 have the jury go back in. And then I'm going to ask you
5 whether or not you wish to present a case, all right?

6 And if you wish to present a case, you may.

7 DEFENDANT SYCHANTHA: Okay.

8 THE COURT: Call witnesses or whatever.

9 DEFENDANT SYCHANTHA: All right.

10 THE COURT: And, of course, you can testify on your
11 behalf or not testify on your behalf, okay?

12 DEFENDANT SYCHANTHA: Okay.

13 THE COURT: It's all up to you. And I'm sure
14 Mr. Steingold has reviewed that, those issues with you, and
15 you've reviewed the jury instruction packet, and I see there's
16 the jury instruction that indicates to me that you may not be
17 testifying. And the jury will be read that instruction, will
18 have that instruction, that if you don't testify, they cannot
19 hold that against you.

20 Did you see that instruction?

21 DEFENDANT SYCHANTHA: Yes.

22 THE COURT: So the process is, let the Government
23 conclude their case, and then the jury will go back, and you
24 can tell me whether or not you wish to present a case. If you
25 do, start calling some witnesses, okay?

1 DEFENDANT SYCHANTHA: Thank you.

2 THE COURT: It's totally up to you, all right?

3 DEFENDANT SYCHANTHA: Yes.

4 THE COURT: Okay. So that's the game plan, all
5 right?

6 So I think we're going to have to tweak the jury
7 instructions, okay, based upon Mr. Sok not testifying. There
8 were two different drafts, so one draft with him testifying,
9 one draft without him.

10 So hand me the one jury instruction packet that we
11 are going to use, okay?

12 MR. NORWOOD: Yes, your Honor.

13 THE COURT: Agreeable?

14 Agreeable to the defense?

15 DEFENDANT SYCHANTHA: Yes.

16 THE COURT: Okay. Oh, and the exhibit list is going
17 to have to be altered as well, right, based upon Mr. Sok?

18 It looks like --

19 MR. MARTIN: Yes, your Honor. Yes.

20 THE COURT: -- certain proposed exhibits will not be
21 getting into evidence.

22 MR. NORWOOD: That's correct, your Honor.

23 THE COURT: And so, again, let's get a clean exhibit
24 list, because the exhibit list goes into the jury as well with
25 the jury instruction packet. It goes to the foreperson.

1 Agreeable to everybody?

2 DEFENDANT SYCHANTHA: Yes.

3 THE COURT: Okay.

4 MR. MARTIN: Your Honor, I apologize, and I know you
5 set off the sequence. I just want to make sure we understand
6 it so we follow it.

7 You'll bring in the jury, we will rest in front of
8 the jury, and then will the Court then be asking the jury to
9 leave so the Court can inquire the defendant as to whether he
10 plans to testify?

11 THE COURT: I'm going to ask -- have the jury go back
12 in.

13 MR. MARTIN: Okay.

14 THE COURT: And I'll find out whether or not defense
15 is going to present a case, all right? And in good thought
16 I'll ask the defendant whether or not he wishes to testify.
17 And if he doesn't wish -- and if he's discussed the issue with
18 his attorney -- or with Mr. Steingold. But that's a good
19 thought. Take care of those two.

20 MR. MARTIN: Thank you, your Honor. Thank you.

21 THE COURT: Is that also agreeable?

22 DEFENDANT SYCHANTHA: Yes, your Honor.

23 THE COURT: Okay. All right.

24 THE CLERK: Court is in recess.

25 (Off the record at 9:18 a.m.)

1 (Back on the record at 9:26 a.m.)

2 THE CLERK: All rise. The United States District
3 Court for the Eastern District of Michigan is back in session.

4 Please be seated. And it calls Case Number 05-81165,
5 United States of America versus Khaophone Sychantha.

6 Counsel, can I have appearances, please?

7 MR. NORWOOD: Good morning, your Honor. Jason
8 Norwood on behalf of the United States.

9 MR. MARTIN: And Patrick Martin on behalf of the
10 United States. Good morning, your Honor.

11 THE COURT: Good morning.

12 Ready for the jury?

13 MR. NORWOOD: Yes, your Honor.

14 THE COURT: Ready.

15 DEFENDANT SYCHANATHA: Yes, your Honor.

16 THE CLERK: All rise for the jury.

17 (JURY IN AT 9:28 a.m.)

18 THE CLERK: Please be seated.

19 THE COURT: Now, don't get too comfortable. You'll
20 find out in a moment.

21 All right. Mr. Norwood, Mr. Martin, any further
22 witnesses?

23 MR. NORWOOD: No, your Honor.

24 At this time, the Government rests.

25 THE COURT: Okay. Now, I'm just going to have you go

1 back into the jury room for a quick minute. And when you come
2 out, I'm going to ask the defense, the defendant, whether or
3 not he wishes to present a case, okay?

4 Remember, the defense is under no obligation to do or
5 prove anything during the course of the trial. Therefore, the
6 defense is under no obligation to call any witnesses, no
7 obligation to present any documents or objects for your
8 consideration.

9 And, of course, as we discussed several times,
10 defense is under no obligation, the defendant is under no
11 obligation to testify.

12 Do all of you understand that?

13 JURORS: Yes.

14 THE COURT: And if he exercises his constitutional
15 right not to testify, you can't hold that against him.

16 Everyone understand?

17 JURORS: Yes.

18 THE COURT: All right. So go back in the jury room.
19 Don't get comfortable there, either. I'll be bringing you
20 right back out.

21 THE CLERK: All rise for the jury.

22 (JURY OUT AT 9:30 a.m.)

23 THE CLERK: Please be seated.

24 THE COURT: Sir, do you wish to present a case?

25 DEFENDANT SYCHANTHA: Yes, your Honor.

1 THE COURT: Okay. It's my understanding that you
2 wish to call Special Agent Manns, is that accurate?

3 DEFENDANT SYCHANTHA: Yes.

4 THE COURT: Okay. And any other witnesses -- do you
5 anticipate calling any other witnesses?

6 DEFENDANT SYCHANTHA: No.

7 THE COURT: Okay. Have you decided whether or not
8 you wish to testify?

9 DEFENDANT SYCHANTHA: No, I'm not going to testify,
10 your Honor.

11 THE COURT: Okay. Did you discuss the issue of
12 whether you wish to testify or not with Mr. Steingold?

13 DEFENDANT SYCHANTHA: Yes.

14 THE COURT: Okay. Is that accurate, Mr. Steingold?

15 MR. STEINGOLD: Yes, it is, your Honor.

16 THE COURT: Is it agreeable to you, sir, or would you
17 want Mr. Steingold voir dire you to ask you questions about
18 that issue of whether or not you should or should not testify
19 or wish to testify or not?

20 DEFENDANT SYCHANTHA: Say -- yes.

21 THE COURT: Mr. Steingold, you may proceed.

22 MR. STEINGOLD: Mr. Sychantha, you understand you
23 have a right to testify on your own behalf, correct?

24 DEFENDANT SYCHANTHA: Yes.

25 MR. STEINGOLD: And nobody can stop you from

1 testifying. It's your decision whether to testify. And you
2 understand that if you don't testify, the Judge is going to
3 instruct the jury, again, that they can draw no adverse
4 inference from your refusal to testify?

5 DEFENDANT SYCHANTHA: Yes.

6 MR. STEINGOLD: Do you have any thoughts, any
7 questions about your right to testify?

8 DEFENDANT SYCHANTHA: No.

9 MR. STEINGOLD: You understand once you give it up,
10 you're not going to be able to change your mind later on?

11 DEFENDANT SYCHANTHA: Yes.

12 THE COURT: And again, sir, is it your decision --

13 DEFENDANT SYCHANTHA: Yes.

14 THE COURT: -- not to testify.

15 DEFENDANT SYCHANTHA: Yes.

16 THE COURT: Any questions for the Court?

17 DEFENDANT SYCHANTHA: No.

18 THE COURT: All right. Very good.

19 Let's bring the jury out.

20 THE CLERK: All rise for the jury.

21 (JURY IN AT 9:33 a.m.)

22 THE CLERK: Please be seated.

23 THE COURT: Sir, do you wish to present a case?

24 DEFENDANT SYCHANTHA: Yes, your Honor.

25 THE COURT: And who -- it's my understanding you wish

1 to call a witness?

2 DEFENDANT SYCHANTHA: Yes.

3 THE COURT: And who would that be?

4 DEFENDANT SYCHANTHA: Special Agent Brian Manns.

5 THE COURT: All right. Sir, come up, please.

6 And again, could you give your name to the court
7 reporter?

8 THE WITNESS: Yes.

9 **SPECIAL AGENT BRIAN MANNS,**

10 being first duly sworn to tell the truth, was
11 examined and testified upon his oath as follows:

12 - - -

13 THE COURT: Please have a seat in the witness chair.

14 (9:34 a.m.)

15 DIRECT EXAMINATION

16 BY DEFENDANT SYCHANTHA:

17 Q. Special Manns, so you were the lead investigator of this
18 case?

19 A. Yes, I am.

20 Q. Okay. Do you have my extradition warrant?

21 A. I do not.

22 Q. You do not?

23 Then how -- how -- how am I brought to this country
24 from Canada?

25 MR. NORWOOD: Objection, your Honor.

1 THE COURT: Not relevant.

2 DEFENDANT SYCHANTHA: Well --

3 THE COURT: Not relevant.

4 DEFENDANT SYCHANTHA: Okay.

5 BY DEFENDANT SYCHANTHA:

6 Q. Is there a statute of limitation on drug charges?

7 A. There are a statute of limitations, correct.

8 Q. What do you --

9 MR. NORWOOD: Objection, your Honor. Relevance.

10 THE COURT: Sustained.

11 BY DEFENDANT SYCHANTHA:

12 Q. What is the years on the statute of limitation?

13 MR. NORWOOD: Objection, your Honor.

14 THE COURT: Irrelevant.

15 BY DEFENDANT SYCHANTHA:

16 Q. How come it took so long for you to bring this case to
17 trial?

18 A. Bringing a case to trial is dependent upon the U.S.
19 attorneys --

20 MR. NORWOOD: Objection, your Honor. Relevance.

21 THE COURT: Let's have a sidebar.

22 (Sidebar held outside the hearing of the jury at
23 9:35 a.m.)

24 THE COURT: Why would it be relevant?

25 MR. NORWOOD: United States Attorney's Office would

1 make decisions as to when cases are charged, so Agent Manns
2 would have no information about that, nor does that go to the
3 merits of this case when this case was charged, so it would be
4 irrelevant to the legal merits of this case, the date and time
5 where the defendant was charged.

6 THE COURT: Your response?

7 DEFENDANT SYCHANTHA: I didn't get that.

8 What did you say?

9 MR. NORWOOD: Sure.

10 So I said was -- and I'm paraphrasing.

11 I said, U.S. Attorney's Office makes decisions on
12 when defendants are charged. And Agent Manns will not have any
13 information about that (inaudible). And so no basis for legal
14 merits, meaning, what this case is about, when the case would
15 be charged, and is not relevant.

16 DEFENDANT SYCHANTHA: You guys would have
17 (inaudible), right?

18 MR. NORWOOD: Right, but Agent Manns is an agent.

19 MR. STEINGOLD: The witness has just said I don't
20 know.

21 THE COURT: So I could see it would seem to be it
22 would be irrelevant, and then I don't know what his response
23 would be, and it would open -- be a whole line of testimony
24 that would be totally irrelevant to the issues for the jury to
25 decide.

1 MR. NORWOOD: Very well.

2 THE COURT: So that's --

3 MR. NORWOOD: Thank you.

4 (Sidebar concluded at 9:38 a.m.)

5 THE COURT: Objection sustained.

6 You may proceed, sir.

7 BY DEFENDANT SYCHANTHA:

8 Q. So --

9 DEFENDANT SYCHANTHA: Can I have a minute, your
10 Honor?

11 THE COURT: Yes, take your time.

12 DEFENDANT SYCHANTHA: Okay.

13 BY DEFENDANT SYCHANTHA:

14 Q. Special Manns, how long has the case been going on for?

15 A. My case started in 2005.

16 Q. So that's 19 years?

17 A. Yes, sir.

18 Q. Would you say that's way past the statute of limitation?

19 THE COURT: Again, that issue is not relevant.

20 DEFENDANT SYCHANTHA: Okay. That's it, your Honor.

21 THE COURT: Sure.

22 Any questions from the Government?

23 MR. NORWOOD: No questions, your Honor.

24 THE COURT: Sir, you may step down.

25 THE WITNESS: Thank you, your Honor.

1 THE COURT: Any further witnesses from the defense?

2 DEFENDANT SYCHANTHA: Can I ask that Government to
3 produce --

4 THE COURT: If you have a motion, it's not in front
5 of the jury.

6 DEFENDANT SYCHANTHA: Oh, okay.

7 THE COURT: Do you want to have a sidebar?

8 DEFENDANT SYCHANTHA: No. That's it, your Honor.

9 THE COURT: Okay. Do you rest? Do you conclude your
10 case?

11 DEFENDANT SYCHANTHA: Yes.

12 THE COURT: All right. Rebuttal from the Government?

13 MR. NORWOOD: No rebuttal witnesses, your Honor.

14 THE COURT: Members of the jury, that concludes the
15 presentation of the case to you. You've heard from the
16 witnesses you're going to hear from and you saw various
17 documents or objects that have been received into evidence as
18 exhibits.

19 We're moving into the final stage of the trial.
20 Shortly, I will give the jury instructions to you, and the jury
21 instructions are the law that applies to this case. Each of
22 you will receive your own jury instruction packet, and so as
23 I'm reading the jury instructions, you can follow along in your
24 jury instruction packet.

25 When that's concluded, we'll move into the very final

1 stage of the trial, closing arguments. During closing
2 arguments, start with first, either Mr. Martin or Mr. Norwood,
3 they will get up and they're going to give their closing
4 argument to you. In that closing argument, they're going to
5 tell you what they believe the evidence has shown to you. When
6 they're done, Mr. Sychantha has the opportunity to give a
7 closing argument to you. Like the U.S. attorneys, he will tell
8 you what he believes the evidence has shown to you. When he's
9 done, since, again, the Government has the burden of proof, the
10 law allows the Government a rebuttal closing argument.

11 When we're done with the closing arguments, one of
12 you will be excused to form a jury of 12. The 12 will go into
13 the jury room and begin your deliberations. Your first duty,
14 first obligation, as the jurors in this case is to select your
15 foreperson. Take your time. When you're selecting your
16 foreperson, remember, your foreperson is your manager, manages
17 the deliberations.

18 When you have selected your foreperson, foreperson
19 will write a note, hit the buzzer, knock on the door and hand
20 us a note saying that you have you've selected your foreperson.

21 At that time, we'll hand in all your notes, your jury
22 instruction packet, and we'll have an original jury instruction
23 packet and verdict form for the foreperson.

24 The foreperson is also going to have a list of all
25 the exhibits that have been received into evidence during the

1 trial. And if you want any or all the exhibits that have been
2 admitted, all you have to do is just ask for them, okay?

3 With respect to the drugs that have been admitted
4 during the course of the trial, if you want to see the drugs
5 that have been admitted, we will have a court officer bring
6 those drugs -- that packet of drugs or packets of drugs in the
7 jury room for you to look at, okay? And then when you're done
8 looking at them, they will be taken out of the jury room, okay?

9 Everyone essentially got the process?

10 JURORS: Yes.

11 THE COURT: Okay. So I need you to go in the jury
12 room right now. And we're finalizing the jury instruction
13 packet, okay? We've moved a lot faster than anticipated. So
14 we're just trying to catch up, okay?

15 All right. Thank you.

16 THE CLERK: All rise.

17 (JURY OUT AT 9:43 a.m.)

18 THE CLERK: Please be seated.

19 THE COURT: So do we have the packets ready?

20 MR. MARTIN: Yes, your Honor.

21 May I approach?

22 THE COURT: Yes, please.

23 MR. MARTIN: Your Honor, I'm handing Ms. McCoy 16
24 copies of the final jury instructions, as well as two copies of
25 the verdict form.

1 THE COURT: And have they been shared with the
2 defense?

3 MR. MARTIN: Yes, there's a copy with Mr. Sychantha
4 and Mr. Steingold.

5 THE COURT: I'm going to take a packet back to my
6 office and just review it again, okay?

7 MR. MARTIN: Yes, your Honor.

8 THE COURT: Just give me a few minutes.

9 MR. MARTIN: Yes, your Honor.

10 THE CLERK: All rise.

11 THE COURT: And are we working on the exhibit list?

12 MR. NORWOOD: We are, your Honor.

13 MR. MARTIN: Yes, your Honor.

14 THE COURT: Okay.

15 THE CLERK: Court is in recess.

16 (Off the record at 9:45 a.m.)

17 (Back on the record at 9:51 a.m.)

18 THE CLERK: All rise.

19 Court is back in session.

20 THE COURT: So you have submitted the jury
21 instructions, as well as the verdict form, that you wish me to
22 read to the jury and submit to the jury, is that correct?

23 MR. NORWOOD: Yes, your Honor.

24 THE COURT: Is that correct, sir?

25 DEFENDANT SYCHANATHA: Yes, your Honor.

1 THE COURT: Okay. And I have reviewed them as well.
2 And we're going to -- we're putting the jury
3 instructions -- providing each member of the jury a copy of the
4 jury instructions and the verdict form.

5 Then, the plan would be to break and set up for
6 closings, if that's agreeable to everybody.

7 MR. NORWOOD: It is, your Honor.

8 DEFENDANT SYCHANTHA: Yes, your Honor.

9 THE COURT: And how much time do you need -- how much
10 of a break do you need to set up for closings?

11 And I'm not -- I'm not rushing you. Take --

12 MR. NORWOOD: About 15 to 20 minutes would be
13 perfect, your Honor.

14 THE COURT: Okay. Then I'll give the jury their
15 morning break at that time.

16 MR. NORWOOD: Okay.

17 THE COURT: And before you start your closing, I'm
18 going to ask you this question, how much time do you need to
19 close?

20 MR. NORWOOD: About 25 minutes, your Honor.

21 THE COURT: I didn't ask for the answer yet.

22 MR. NORWOOD: I'm sorry, your Honor. I apologize.

23 THE COURT: As long as you're reasonable, you got it,
24 okay?

25 Understand, sir?

1 DEFENDANT SYCHANTHA: Yes.

2 THE COURT: All right. Shall we start with the jury
3 instructions?

4 Are we ready?

5 MR. NORWOOD: Yes, your Honor.

6 THE COURT: Sir, are we ready?

7 DEFENDANT SYCHANTHA: Yes, your Honor.

8 THE CLERK: All rise for the jury.

9 (JURY IN AT 9:53 a.m.)

10 THE CLERK: Please be seated.

11 THE COURT: All right. Does everyone have the jury
12 instruction packet?

13 JURORS: Yes.

14 THE COURT: Okay. Now, remember, the jury
15 instructions are the law that applies to this case. You decide
16 the facts of the case. You decide what happened. Not me,
17 right?

18 And you take your decision as to the facts of the
19 case, what happened, coupled with the law as I give it to you
20 in the jury instruction packet. And in that way, that manner,
21 you reach your decision, you reach your verdict.

22 Everyone understand?

23 JURORS: Yes.

24 THE COURT: Now, see page 1? Rip it off because
25 these are the jury instructions. They're not the proposed jury

1 instructions, okay?

2 Ready.

3 Okay. Page 2: Members of the jury, now it is time
4 for me to instruct you about the law you must follow in
5 deciding this case. I will start by explaining your duties and
6 general rules that apply in every criminal case, then I will
7 explain the parts, the elements, of the crime that the
8 defendant is charged -- sorry -- is accused of committing.
9 Then, I will explain some rules that you must follow in
10 evaluating particular testimony and evidence.

11 And last, I will explain the rules that you must
12 follow during your deliberations in the jury room and the
13 possible verdicts that you may return.

14 Please listen very carefully to everything I say.

15 Juror Duties.

16 You have two main duties as jurors. The first one is
17 to decide what the facts are from the evidence that you saw and
18 heard here in court. Deciding what the facts are is your job,
19 not mine, and nothing that I have said or done during this
20 trial was meant to influence your decision about the facts in
21 any way.

22 Your second duty is to take the law that I give you,
23 apply it to the facts, and decide if the Government has proved
24 the defendant guilty beyond a reasonable doubt. It is my job
25 to instruct you about the law, and you are bound by the oath

1 that you took at the beginning of the trial to follow the
2 instructions that I give you, even if you personally disagree
3 with them. This includes the instructions that I gave you
4 before the trial and during the trial, and these instructions.
5 All the instructions are important, and you should consider
6 them together as a whole.

7 The lawyers have talked -- will talk about the law
8 during the closing arguments. But if what they say is
9 different from what I say, you must follow what I say. What I
10 say about the law controls.

11 Perform these duties fairly. Do not let any bias,
12 sympathy or prejudice that you may feel toward one side or the
13 other influence your decision in any way.

14 Page 4, Presumption of Innocence, Burden of Proof,
15 Reasonable Doubt.

16 As you know, the defendant has pled not guilty to the
17 crime charged in the indictment, or crimes charged in the
18 indictment. The indictment is not any evidence at all of
19 guilt. It is just the formal way the Government tells the
20 defendant what crime he is accused of committing. It does not
21 even raise any suspicion of guilt.

22 Instead, the defendant starts the trial with a clean
23 slate, with no evidence at all against him, and the law
24 presumes that he is innocent. This presumption of innocence
25 stays with him unless the Government presents evidence here in

1 court that overcomes the presumption and convinces you beyond a
2 reasonable doubt that he is guilty.

3 This means that the defendant has no obligation to
4 present any evidence at all or to prove to you in any way that
5 he is innocent. It is up to the Government to prove that he is
6 guilty, and this burden stays on the Government from the --
7 from start to finish. You must find the defendant not guilty
8 unless the Government convinces you beyond a reasonable doubt
9 that he is guilty.

10 The Government must prove every element of the crime
11 charged beyond a reasonable doubt. Possible doubts or doubts
12 based purely on speculation are not reasonable doubts. A
13 reasonable doubt is a doubt based on reason and common sense.
14 It may arise from the evidence, the lack of evidence, or the
15 nature of the evidence.

16 Proof beyond a reasonable doubt means proof that is
17 so convincing that you would not hesitate to rely and act on it
18 while making the most important decisions in your own lives.
19 If you are convinced that the Government has proved the
20 defendant guilty beyond a reasonable doubt, say so by returning
21 a guilty verdict. If you are not convinced, say so by
22 returning a not guilty verdict.

23 You must make your decision based only on the
24 evidence that you saw and heard here in court. Do not let
25 rumors, suspicions, or anything else that you may have seen or

1 heard outside of court influence your decision in any way.

2 The evidence in this case includes only what the
3 witnesses said while they were testifying under oath, the
4 exhibits that I allowed into evidence and the stipulations that
5 the parties agreed to.

6 Nothing else is evidence. The lawyers' statements
7 and arguments are not evidence. Their questions and objections
8 are not evidence. My legal rulings are not evidence. And my
9 comments are not evidence.

10 During the trial, I did not let you hear the answers
11 to some of the questions that the lawyers or the defendant
12 asked. I also ruled that you could not see some of the
13 exhibits that the lawyers may have wanted you to see. And
14 sometimes I ordered you to disregard things that you saw or
15 heard or I struck things from the record. You must completely
16 ignore all of these things. Do not even think about them. Do
17 not speculate about what a witness may have said or what an
18 exhibit might have shown. These things are not evidence, and
19 you are bound by your oath not to let them influence your
20 decision in any way.

21 Make your decision based only on the evidence, as I
22 have defined it here, and nothing else.

23 Page 7, Consideration of Evidence.

24 You are to consider only the evidence in the case.
25 You should use your common sense in weighing the evidence.

1 Consider the evidence in light of your everyday experience with
2 people and events and give it whatever weight you believe it
3 deserves. If your experience tells you that certain evidence
4 reasonably leads to a conclusion, you are free to reach that
5 conclusion.

6 In our lives, we often look at one fact and conclude
7 from it that another fact exists. In law, we call this an
8 inference. A jury is allowed to make reasonable inferences,
9 unless otherwise instructed. Any inferences you make must be
10 reasonable and must be based on the evidence in the case.

11 The existence of an inference does not change or
12 shift the burden of proof from the Government to the defendant.

13 Page 8, Direct and Circumstantial Evidence.

14 Now, some of you may have heard the terms "direct
15 evidence" and "circumstantial evidence."

16 You'll recall we went over these terms when we first
17 got together last week.

18 Direct evidence is simply evidence like the testimony
19 of an eyewitness, which, if you believe it, directly proves a
20 fact. If a witness testified that he saw it raining outside,
21 and you believed him, that would be direct evidence that it was
22 raining.

23 Circumstantial evidence is simply a chain of
24 circumstances that indirectly proves a fact. If someone walked
25 into the courtroom wearing a raincoat covered with small drops

1 of water or with drops of water and carrying a wet umbrella,
2 that would be circumstantial evidence from which you conclude
3 that it is raining.

4 It is your job to decide how much weight to give the
5 direct and circumstantial evidence. The law makes no
6 distinction between the weight that you should give to either
7 one or say that one is any better evidence than the other. You
8 should consider all the evidence, both direct and
9 circumstantial, and give it whatever weight you believe it
10 deserves.

11 Page 9, Credibility of Witnesses.

12 Another part of your job as jurors is to decide how
13 credible or believable each witness was. This is your job, not
14 mine. It is up to you to decide if a witness' testimony was
15 believable and how much weight you think it deserves. You are
16 free to believe everything that a witness said or only part of
17 it, or none of it at all. But you should act reasonably and
18 carefully in making these decisions.

19 Let me suggest some things for you to consider in
20 evaluating each witness' testimony.

21 Ask yourself if the witness was able to clearly see
22 or hear the events. Sometimes even an honest witness may not
23 have been able to see or hear what was happening and may make a
24 mistake.

25 Ask yourself how good the witness' memory seemed to

1 be. Did the witness seem able to accurately remember what
2 happened?

3 Ask yourself if there was anything else that may have
4 interfered with the witness' ability to perceive or remember
5 the events.

6 Ask yourself how the witness acted while testifying.
7 Did the witness appear honest? Or did the witness appear to be
8 lie?

9 Ask yourself if the witness had any relationship to
10 the Government or the defendant, or anything to gain or lose
11 from the case, that might influence the witness' testimony.
12 Ask yourself if the witness had any bias or prejudice, or
13 reason for testifying that might cause a witness to lie or to
14 slant the testimony in favor of one side or the other.

15 Ask yourself if the witness testified inconsistently
16 while on the witness stand or if the witness said or did
17 something, or failed to say or do something, at any other time
18 that is inconsistent with what the witness said while
19 testifying. If you believe that the witness was inconsistent,
20 ask yourself if this makes the witness' testimony less
21 believable. Sometimes it may, other times it may not.
22 Consider whether the inconsistency was about something
23 important or about some unimportant detail. Ask yourself if it
24 seemed like an innocent mistake or if it seemed deliberate.

25 And ask yourself how believable the witness'

1 testimony was in light of all the other evidence. Was the
2 witness' testimony supported or contradicted by other evidence
3 that you found believable? If you believe that a witness'
4 testimony was contradicted by other evidence, remember that
5 people sometimes forget things, and that even two honest people
6 who witness the same event may not describe it exactly the same
7 way.

8 These are only some of the things that you may
9 consider in deciding how believable each witness was. You may
10 also consider other things that you think shed some light on
11 the witness' believability. Use your common sense and your
12 everyday experience in dealing with other people. And then
13 decide what testimony you believe and how much weight you think
14 it deserves.

15 The testimony of a law enforcement officer is
16 entitled to no greater weight than that of other witnesses
17 simply because he or she is a law enforcement officer.

18 Number of Witnesses, page 12.

19 One more point about witnesses. Sometimes jurors
20 wonder if the number of witnesses who testified makes any
21 difference. Do not make any decisions based only on the number
22 of witnesses who testified. What is more important is how
23 believable the witnesses were and how much weight you think
24 their testimony deserves. Concentrate on that, not the
25 numbers.

1 Lawyers' Objections, page 13.

2 There's one more general subject that I want to talk
3 to you about before I begin explaining the elements of the
4 crime charged.

5 The lawyers for both sides objected to some of the
6 things -- or lawyers and the defendant objected to some things
7 that were said or done during the trial. Do not hold that
8 against them. The lawyers and the defendant have a right --
9 sorry -- have a duty to object whenever they think something is
10 not permitted by the Rules of Evidence. Those rules are
11 designed to make sure that both sides receive a fair trial.

12 And do not interpret my rulings on their objections
13 as any indication of how I think the case should be decided.
14 My rulings were based on the Rules of Evidence, not on how I
15 feel about the case. Remember that your decision must be based
16 only on the evidence that you saw and heard here in court.

17 Page 14, Defining the Crime, Introduction.

18 That concludes my part of my instructions explaining
19 your duty and the general rules that apply in every criminal
20 case. In a moment, I will explain the elements of the crimes
21 that the defendant is accused of committing. But before I do
22 that, I want to emphasize that the defendant is only on trial
23 for the particular crimes charged in the indictment. Your job
24 is limited to deciding whether the Government has proved the
25 crimes charged.

1 And also keep in mind that whether anyone else should
2 be prosecuted and convicted for these crimes is not a proper
3 matter for you to consider. The possible guilt of others is no
4 defense to a criminal charge. Your job is to decide if the
5 Government has proved this defendant guilty. Do not let the
6 possible guilt of others influence your decision in any way.

7 Count One - Conspiracy to Violate the Drug Laws, 21
8 U.S.C. Section 846.

9 Count One of the indictment charges the defendant
10 with conspiracy to possess with intent to distribute controlled
11 substances.

12 It is a crime for two or more persons to conspire, or
13 agree, to commit a drug crime, even if they never actually
14 achieve their goal.

15 A conspiracy is a kind of criminal partnership. For
16 you to find the defendant guilty of the conspiracy charge, the
17 Government must prove each and every one of the following
18 elements beyond a reasonable doubt:

19 First, that beginning on or about May 1, 2003, and
20 continuing throughout on or about January 2011, defendant,
21 together with others known and unknown, did knowingly,
22 intentionally and unlawfully combine, conspire, confederate and
23 agree to possess, with the intention to distribute, and
24 distribute one or more controlled substances, specifically, a
25 substance containing a detectable amount of N-Benzylpiperazine,

1 also known as BZP, which is a Schedule I controlled substance;
2 500 grams or more of a substance containing a detectable amount
3 of methamphetamine, which is a Schedule II controlled
4 substance; five grams or more of methamphetamine, which is a
5 Schedule II controlled substance; and a substance containing a
6 detectable amount of MDMA, methylenedioxymethamphetamine, also
7 known as ecstasy, which is a Schedule I controlled substance.

8 And second, that the defendant knowingly and
9 voluntarily joined the conspiracy.

10 Now, I will give you more detailed instructions on
11 some of these terms.

12 With regard to the first element, a criminal
13 agreement, the Government must prove that two or more persons
14 conspired or agreed to cooperate with each other to distribute
15 or to possess with intent to distribute a controlled substance.

16 This does not require proof of any formal agreement,
17 written or spoken, nor does this require proof that everyone
18 involved agreed on all the details. But proof that people
19 simply met from time to time and talked about common interests,
20 or engaged in similar conduct, is not enough to establish a
21 criminal agreement. These are things that you may consider in
22 deciding whether the Government has proved an agreement. But
23 without more, they are not enough.

24 What the Government must prove is that there was a
25 mutual understanding, either spoken or unspoken, between two or

1 more people to cooperate with each other to possess with intent
2 to distribute controlled substances. This is essential.

3 An agreement can be proved indirectly by facts or
4 circumstances which lead to a conclusion that an agreement
5 existed. But it is up to the Government to -- but it is up to
6 the Government to convince you that such facts and
7 circumstances existed in this particular case.

8 One more point about the agreement. The indictment
9 accuses the defendant of conspiring to commit several drug
10 crimes. The Government does not have to prove that the
11 defendant agreed to commit all these crimes. But the
12 Government must prove an agreement to commit at least one of
13 them for you to return a guilty verdict on the conspiracy
14 charge.

15 With regard to the second element, the defendant's
16 connection to the conspiracy, the Government must prove that
17 the defendant knowingly and voluntarily joined that agreement.
18 The Government must prove that the defendant knew the
19 conspiracy's main purpose and voluntarily joined the conspiracy
20 intending to help advance or achieve its goals. This does not
21 require proof that a defendant knew everything about the
22 conspiracy, or everyone else involved, or that he was a member
23 of it from the very beginning, nor does it require proof that a
24 defendant played a major role in the conspiracy, or that his
25 connection to it was substantial. A slight role or connection

1 may be enough.

2 Further, this does not require proof that a defendant
3 knew the drugs involved were Benzylpiperazine or MDMA or BZP or
4 methylenedioxymethamphetamine, which is known as ecstasy. It
5 is enough that the defendant knew that it was some kind of
6 controlled substance, nor does it require proof that a
7 defendant knew how much BZP or MDMA, ecstasy, was involved. It
8 is enough that the defendant knew that some quantity was
9 involved.

10 But proof that a defendant simply knew about a
11 conspiracy, or was present at times, or associated with members
12 of the group, is not enough, even if he approved of what was
13 happening or did not object. Similarly, just because a
14 defendant may have done something that happened to help a
15 conspiracy does not necessarily make him a co-conspirator a
16 conspirator. These are all things that you may consider in
17 deciding whether the Government has proved that a defendant
18 joined a conspiracy. But without more, they are not enough.

19 A defendant's knowledge can be proved indirectly by
20 facts and circumstances which lead to a conclusion that he knew
21 the conspiracy's main purpose. But it is up to the Government
22 to convince you that such facts and circumstances existed in
23 this particular case.

24 You must be convinced that the Government has proved
25 all of these elements beyond a reasonable doubt in order to

1 find a defendant guilty of the conspiracy charge.

2 Finally, to convict the defendant of the conspiracy
3 charge, the Government must convince you beyond a reasonable
4 doubt that the defendant was a member of the conspiracy charged
5 in the indictment. If the Government fails to prove this, then
6 you must find that defendant not guilty of the conspiracy
7 charge, even if you find that he was a member of some other
8 conspiracy. Proof that a defendant was a member of some
9 conspiracy -- other -- sorry -- proof that a defendant was a
10 member of some other conspiracy is not enough to convict. But
11 proof that a defendant was a member of some other conspiracy
12 would not prevent you from returning a guilty verdict, if the
13 Government also proved that he was a member of the conspiracy
14 charged in the indictment.

15 Page 21, Unanimity Required on Count One:
16 Determining Amount of Controlled Substance.

17 The defendant is charged in Count One of the
18 indictment with conspiracy to possess with an intent to
19 distribute controlled substances. If you find a defendant
20 guilty of this count, then you will be asked to determine the
21 type and quantity of the controlled substances involved in the
22 conspiracy attributable to him. The verdict form has an
23 additional question relating to that issue.

24 If you find by unanimous agreement that the
25 Government has proved beyond a reasonable doubt that the

1 conspiracy involved the amount of a controlled substance as
2 alleged in the indictment as attributable to a defendant, then
3 please indicate this finding on the verdict form.

4 If you do not so find, you will then be asked to
5 determine whether the Government has proved a lesser quantity.
6 If you unanimously find that the Government has proved beyond a
7 reasonable doubt a lesser quantity than alleged in the
8 indictment, then please indicate that finding on the verdict
9 form.

10 In determining the type and quantity of controlled
11 substances involved in the conspiracy attributable to a
12 defendant, you must determine what type and quantity of
13 controlled substance that the defendant either personally
14 agreed, or encouraged, would be possessed with the intent to
15 distribute, or that he could have reasonably foreseen would be
16 possessed with the intent to distribute, as part of the
17 conspiracy.

18 Count Two, Possession of a Controlled Substance with
19 Intent to Distribute, 21 U.S.C. 841(a)(1).

20 The defendant is charged in Count Two with a crime of
21 possession of a controlled substance with intent to distribute.
22 Benzylpiperazine, known as BZP, methamphetamine and MDMA, which
23 is methylenedioxymethamphetamine, also known as ecstasy, are
24 controlled substances. For you to find the defendant guilty of
25 this crime, you must find that the Government has proved each

1 and every one of the following elements beyond a reasonable
2 doubt.

3 First, on or about December 18, 2008, the defendant
4 knowingly possessed a controlled substance, specifically, a
5 substance containing a detectable amount of Benzylpiperazine,
6 also known as BZP, which is a Schedule I controlled substance;
7 a substance containing a detectable amount of MDMA,
8 methylenedioxymethamphetamine, also known as ecstasy, which is
9 a Schedule I controlled substance; and second, the defendant
10 intended to distribute these controlled substances.

11 Count Three, Possession of a Controlled Substance
12 with Intent to Distribute. That's 21 U.S.C. Section 841(a)(1).

13 The defendant is charged in Count Three with the
14 crime of possession with intent to distribute.
15 Benzylpiperazine, also known as BZP, methamphetamine, MDMA,
16 which is methylenedioxymethamphetamine, also known as ecstasy,
17 are controlled substances. For you to find the defendant
18 guilty of this crime, you must find the defendant has proved
19 each and every one of the following elements beyond a
20 reasonable doubt.

21 First, that on or about January 26, 2009, the
22 defendant knowingly possessed a controlled substance,
23 specifically, a substance containing a detectable amount of
24 BZP.

25 Is it okay if I just use the term BZP, MDMA and

1 ecstasy?

2 MR. NORWOOD: Yes, your Honor.

3 THE COURT: Is that agreeable to the defense?

4 DEFENDANT SYCHANTHA: Yes, your Honor.

5 THE COURT: Chemistry was never my strong suit, so
6 I'm doing the best I can.

7 Continuing.

8 Which is a Schedule I controlled substance; 500 grams
9 or more of a substance containing a detectable amount of
10 methamphetamine, which is a Schedule II controlled substance;
11 and five grams or more of methamphetamine, which is a Schedule
12 II controlled substance; and a substance containing a
13 detectable amount of MDMA, which is also known as ecstasy,
14 which is a Schedule I controlled substance.

15 And second, the defendant intended to distribute
16 these controlled substances.

17 Page 26, Unanimity Required on Count Three:
18 Determining Amount of Controlled Substance.

19 The defendant is charged in Count Three of the
20 indictment with possession with intent to -- sorry -- the
21 defendant is charged in Count Three of the indictment with
22 possession of a controlled substance with intent to distribute.
23 If you find the defendant guilty of Count Three, then you will
24 be asked to determine the quantity of the controlled substance
25 involved in the offense. You will be provided with a special

1 verdict form for this purpose.

2 If you find by unanimous agreement that the
3 Government has proved beyond a reasonable doubt that the
4 offense involved the amount of a controlled substance as
5 alleged in the indictment, then please indicate this finding on
6 the verdict form.

7 If you do not so find, then you will be -- if you do
8 not so find, then you will be asked to determine whether the
9 Government has proved a lesser quantity. If you unanimously
10 find that the Government has proved beyond a reasonable doubt a
11 lesser quantity than alleged in the indictment, then please
12 indicate that finding on the verdict form.

13 In determining the type and quantity of controlled
14 substances involved in the conspiracy attributable to a
15 defendant, you must determine what type and quantity of
16 controlled substance that the defendant either personally
17 agreed, or encouraged, would be possessed with intent to
18 distribute, or that he could have reasonably foreseen would be
19 possessed with the intent to distribute, as part of the
20 conspiracy.

21 Can we take a break right now?

22 MR. MARTIN: Yes, your Honor.

23 THE CLERK: All rise.

24 (JURY OUT AT 10:25 a.m.)

25 THE CLERK: You may be seated.

1 THE COURT: I'm wondering if there's an issue. As
2 I'm reading the jury instructions on Counts One and Three and
3 comparing it with the verdict form, the jury instructions
4 indicate a lesser -- the jury will be asked to determine
5 whether the Government has proved a lesser quantity. That is
6 not reflected on the verdict form, unless I'm not correctly
7 understanding.

8 MR. MARTIN: Court's indulgence.

9 Your Honor, the Government's position is that if as
10 the jury is going through the verdict form and answers yes, for
11 example, to Count One, but then they answer no to question 1A,
12 the 500 grams, and no to the 5 grams, by virtue of that, the
13 jury would be finding him guilty of the conspiracy but saying
14 no to the charged quantity. So it would still be guilty but
15 there just would not be a finding as to the charged quantity.

16 So it would be --

17 THE COURT: But, specifically, I'm looking on page
18 26, paragraph 3.

19 Mr. Steingold, any thoughts?

20 MR. STEINGOLD: I understand the confusion, your
21 Honor. I wish I would have questioned this language
22 beforehand, but I think that what may be necessary is for the
23 Court to show them the verdict form and explain how they would
24 come up with the answers to those questions after the not
25 guilty or guilty verdict.

1 THE COURT: But should 3 on page 26 and 3 -- sorry.

2 MR. STEINGOLD: I believe that the instruction should
3 say you can find that the jury found either 500 or more --

4 THE COURT: Stay with me.

5 MR. STEINGOLD: -- grams of a --

6 THE COURT: Just stay with me.

7 MR. STEINGOLD: I'm sorry.

8 THE COURT: Preparing the agreed upon verdict form,
9 should paragraph 3 on page 21 and paragraph 3 on 26 be deleted
10 from the jury instructions?

11 Do you want a few moments to think about it?

12 MR. MARTIN: Yes, your Honor.

13 MR. NORWOOD: Just a moment, your Honor.

14 THE COURT: Do you understand my concern?

15 MR. STEINGOLD: Yes, your Honor.

16 THE COURT: If you need to make some phone calls --

17 MR. NORWOOD: Your Honor --

18 THE COURT: Gentlemen, if you need to make some phone
19 calls or consult, feel free to do so. I'm in no rush.

20 MR. MARTIN: Thank you, your Honor. We'll do that.

21 THE COURT: Okay. Let me know when you're ready.

22 MR. MARTIN: Thank you.

23 THE CLERK: All rise.

24 Court is in recess.

25 (Off the record at 10:30 a.m.)

1 (Back on the record at 10:38 a.m.)

2 THE CLERK: All rise.

3 THE COURT: I'm telling you, take your time. There's
4 no rush on this issue.

5 MR. NORWOOD: Yes, your Honor.

6 THE COURT: So if you need more time.

7 MR. NORWOOD: Just a bit more, your Honor.

8 THE COURT: Okay. Just let me know.

9 MR. MARTIN: I think we're ready.

10 (Off the record at 10:39 a.m.)

11 (Back on the record at 10:49 a.m.)

12 THE CLERK: All rise.

13 Court is back in session.

14 THE COURT: Okay. So where are we at?

15 MR. MARTIN: Your Honor, we have a proposal.

16 We have asked defense whether -- the defendant and
17 Mr. Steingold whether they concur, and it's our understanding
18 they do.

19 So if we go to page 26 of the jury instructions, we
20 believe, your Honor, that language in paragraph 3 is still
21 correct, but that the verdict form should reflect what that
22 paragraph says in referencing a lesser quantity.

23 So our proposal -- if the Court would turn to the
24 verdict form that's proposed.

25 THE COURT: Okay. I'm at 1A.

1 MR. MARTIN: Yes, 1A.

2 Is between the yes or no for the 500 grams -- or, I
3 should say, right underneath that, there should be another
4 prompt that reads: 50 grams or more of a substance containing
5 a detectable of methamphetamine, with two dashes, one for yes,
6 one no. And then it should proceed to the 5 grams or more of
7 pure methamphetamine, because the reference in the jury
8 instructions do the lesser amount than the indictment. The
9 indictment has the 50 -- 500 grams or more for the 10-year but
10 there is a lesser amount determination that could be made by
11 the jury, which is between 50 and 500.

12 And then the -- dive in separately, it talks about 5
13 grams of pure meth.

14 So that, we believe, would solve the issue and
15 correspond to the jury instructions.

16 That same addition, if you will, would have to be
17 added to question 3A for the same reasons articulated.

18 THE COURT: Yes, sir?

19 MR. STEINGOLD: I've got an issue with that, because
20 based on the language in the instructions, if you find the
21 Government has proved beyond a reasonable doubt a lesser
22 quantity than alleged in the indictment, then indicate that
23 finding on the verdict form, it suggests to the jury that they
24 should find the 50 or more. It doesn't tell them that they can
25 find less than 50.

1 MR. MARTIN: No, your Honor. And perhaps I didn't
2 articulate this well.

3 That second prompt we would add in there would have a
4 yes or no.

5 THE COURT: So stay with me.

6 Paragraph 3 on 21 and paragraph 3 on page 26, as I
7 read it to the jury, is okay. It's just that we need to tweak
8 the verdict form on Count One and the verdict form on Count
9 Three, is that correct.

10 MR. MARTIN: Yes.

11 THE COURT: Mr. Steingold, is that correct?

12 MR. STEINGOLD: Yes, your Honor.

13 THE COURT: Well, then let's continue the tweaking to
14 why we get -- both of us get on the same page.

15 MR. STEINGOLD: But I think that the easiest way to
16 explain this confusing language, because even with the change,
17 I think it could be confusing, is if the Judge, and I know
18 you'll do it at the end of the instructions, but perhaps it
19 could be done now, if you could just show them the verdict form
20 and explain how they go about making that determination.

21 THE COURT: Well, I'm agreeable to reviewing the
22 verdict form with the jury, but I think both of you need to
23 agree upon what that verdict form is going to look like with
24 Count One and Count Three.

25 MR. MARTIN: Your Honor, I'm trying to page through

1 the jury instructions now. I believe the jury instructions do
2 -- yes, I'm looking at page 44.

3 To your Honor's point, we do need to fix the verdict
4 form.

5 THE COURT: I'm trying to layout a very simple issue.
6 The jury instructions are fine.

7 What needs to be tweaked is the verdict form.

8 Is that the issue?

9 MR. MARTIN: Partially.

10 And I do want to give you a yes answer. Yes as to
11 the pages you cited, 21 and 26. But on page 44, as part of the
12 jury instructions, it has you look at the verdict form and read
13 out loud to the Court -- to the jurors what the verdict form
14 is.

15 So that verdict form that is embedded in your jury
16 instructions, are in the jury instructions, is wrong because we
17 have to fix it.

18 THE COURT: I know that. And that -- that's the
19 verdict form. Clearly, that was going to be pulled because
20 it's not correct.

21 MR. MARTIN: Correct, your Honor.

22 THE COURT: So let's step back and redefine the
23 issue.

24 The jury instructions are fine. What needs to be
25 corrected is the verdict form, is that correct?

1 MR. STEINGOLD: Yes, your Honor.

2 THE COURT: Is that correct?

3 MR. MARTIN: Yes, your Honor.

4 THE COURT: If it's not correct, let me know.

5 MR. MARTIN: It's not correct, your Honor.

6 So the verdict form is embedded into your -- into the
7 instructions. And then you give instructions after that.

8 So we will have to fix the jury verdict form.

9 But because we have then taken the jury form and put
10 it into your instructions, we'll also have to fix it there. So
11 yes as to we can do that.

12 So yes, your Honor, we can fix it.

13 THE COURT: I had just pulled pages 45, 46 and 47 and
14 48, which are the verdict form.

15 My understanding, we shall keep -- delete paragraph 2
16 on page 48 but keep verdict form limited to charges against
17 defendant on page 48.

18 MR. MARTIN: Yes, your Honor.

19 Your Honor, if I heard you correctly, there is that
20 last paragraph on 48 that the Court will be keeping.

21 THE COURT: So 45, 46, 47, I pulled out of the jury
22 instruction packet, and pull out of the jury instruction packet
23 that the jury has that has not -- I haven't gotten that far
24 yet.

25 And we'll keep page 48, deleting the top paragraph 2,

1 and continuing with verdict limited to the charges against this
2 defendant.

3 MR. STEINGOLD: Your Honor, I'm thinking about how
4 the language in the instructions at page 21 for Count One, and
5 same paragraph for Count Three, could be changed to make it
6 more understandable to the jury.

7 It occurs to me that if we say -- in part three, if
8 you do not so find, you will then be asked to determine whether
9 the Government has proved the lesser quantity.

10 If you unanimously find that the Government has
11 proved beyond a reasonable doubt that there was at least 50
12 grams of a substance containing a detectable amount of
13 methamphetamine, indicate by answering yes on the verdict form.

14 If you find that they have not proved 50, then simply
15 --

16 THE COURT: You know what? I've had several of these
17 cases with the U.S. Attorney's Office, and it's pretty much
18 standard jury instructions and standard verdict form for this
19 type of case that you're office already has. It's not --
20 there's no need to recreate the wheel. The verdict form does
21 not reflect the jury instructions, it appears. It needs to.

22 So let's get it done.

23 Mr. Steingold is there. Let's get it done.

24 THE CLERK: All rise.

25 THE COURT: Mr. Martin, you've brought up -- I was

1 under the impression the jury instructions were fine. I heard
2 Mr. Steingold say they were fine. The only issue was the
3 verdict form.

4 You brought up last several pages of the -- certain
5 pages at the end of the jury instruction packet, which was the
6 attached verdict form. It would seem to me all we would have
7 to do is remove that.

8 So, right now, we have a rather confused record that
9 is something I don't want to have right now. And we need to
10 have a clear record. So all of us -- in particular, the Court
11 of Appeals -- understands what we're doing, how we arrived at
12 the jury instructions that ultimately are going to be
13 concluded, the reading of which will be concluded to the jury.

14 Again, this is not brain surgery. Your office has
15 pretty much standard verdict forms on this. And jury
16 instructions, there's nothing unusual about the charge to this
17 jury.

18 Here's the verdict form that I have that was provided
19 to me, agreed upon earlier by both parties, which needs to be
20 tweaked. And the jury instruction packet, which both parties
21 agreed before I started reading the jury instructions, were
22 supposed to be read to the jury, and I'm handing what I
23 understand should be read to the jury with a tweaked verdict
24 form.

25 So I'll hand it to you, Mr. Steingold.

1 Figure it out.

2 MR. MARTIN: Yes, your Honor.

3 THE COURT: Alex, why don't you clip the jury
4 instructions there?

5 THE COURT: Clip the jury instructions that I have
6 and why don't you clip them?

7 And again, I pulled out the verdict form sections,
8 which were 45, 46 and 47.

9 THE CLERK: Court is in recess.

10 (Off the record at 11:02 a.m.)

11 (Back on the record at 11:03 a.m.)

12 THE COURT: When I'm reviewing the jury instructions
13 and the verdict form, I might want to look at the indictment.

14 MR. MARTIN: All right.

15 (Off the record at 11:03 a.m.)

16 (Back on the record at 11:54 a.m.)

17 THE COURT: We're in the process of revising the
18 verdict form as to Count One and Count Three, is that correct?

19 MR. NORWOOD: That's correct, your Honor.

20 MR. MARTIN: Yes, your Honor.

21 MR. STEINGOLD: Yes, your Honor.

22 THE COURT: And it's my understanding that we have an
23 agreement as to what Count One and Count Three should look
24 like, is that correct?

25 MR. MARTIN: Yes, your Honor.

1 MR. STEINGOLD: Yes, your Honor.

2 The record should reflect that the Court specifically
3 asked Mr. Sychantha if he agreed with the verdict form, and he
4 said yes.

5 THE COURT: Is that true?

6 DEFENDANT SYCHANTHA: Yes.

7 THE COURT: Okay. So we're re-typing the verdict
8 forms as to Count One, Count Two and Count Three right now.

9 And as you know, the jury -- each member of the jury
10 has a jury instruction packet.

11 And I stopped reading after --

12 MR. STEINGOLD: I believe it was page 24, your Honor.

13 THE COURT: No, no. I think I stopped reading after
14 26.

15 And so I have not read pages 45, 46 and 47 to the
16 jury. And I'm going to pull those pages out of the jury
17 instruction packet and then cross out the first paragraph on
18 page 48, paragraph 2, is that correct?

19 MR. MARTIN: Yes, your Honor.

20 DEFENDANT SYCHANTHA: Yes, your Honor.

21 THE COURT: Okay. So I'm going to do that right now.

22 So, Alex, why don't you bring it packet-by-packet and
23 I'll do it?

24 MR. MARTIN: Your Honor, there's one extremely
25 trivial deletion on page 35 that we'd ask the Court to make as

1 well.

2 THE COURT: I know. I was going to have the jury
3 cross that out. You're talking about Jaclyn Iera.

4 MR. MARTIN: Yes. Thank you.

5 THE COURT: I got that.

6 MR. MARTIN: Okay.

7 THE COURT: And do we have something to re-staple?

8 (Off the record at 11:56 a.m.)

9 (Back on the record at 12:16 p.m.)

10 THE COURT: Yes, sir?

11 MR. MARTIN: Your Honor gave us an easy task and we
12 could not complete it.

13 We got a verdict form that was different than what
14 the Court had directed us to do and the --

15 THE COURT: Whoa, whoa. I didn't direct you.

16 MR. MARTIN: I'm sorry.

17 What the parties had agreed to, but we don't have the
18 right verdict form, and we will not have it unless, I think,
19 one of us goes over there and makes sure that we get the right
20 one. And unfortunately, that's going to take some time.

21 And I don't know if it's a recommendation, your
22 Honor, as much as it pains us and is not fair to the jury, is
23 that the Court consider breaking for the day so that we can get
24 this fixed.

25 THE COURT: My thought was to read through page 41,

1 then the verdict form is not an issue.

2 MR. MARTIN: Fine with us, your Honor. Thank you.

3 THE COURT: Agreeable to the defense?

4 And what I do -- I mean, this is what I normally do
5 is, generally with these jury instructions, I'll read the jury
6 instructions, and then after closing arguments, I usually start
7 with a series that starts with duty to deliberate. And that's
8 what I can do here today, which is my normal practice.

9 MR. MARTIN: Sounds good, your Honor.

10 MR. STEINGOLD: Anything we can do to speed this up,
11 your Honor, I agree with the Court's decision.

12 THE COURT: Sir, is that okay with you?

13 DEFENDANT SYCHANTHA: Yes, your Honor.

14 THE COURT: All right. That's the game plan.

15 But before anybody actually leaves, we're going to
16 have a verdict form here that we all agree upon, which we have
17 it, just haven't been typed yet.

18 Okay. Did you do the last one?

19 THE CLERK: Still three more.

20 (Off the record at 12:19 p.m.)

21 (Back on the record at 12:27 p.m.)

22 THE COURT: Okay. I think we're ready to proceed.
23 I'll give you -- in my right hand, I believe I have the jury
24 instructions that you wish me to read to the jury, is that
25 correct?

1 MR. MARTIN: Yes, your Honor.

2 DEFENDANT SYCHANTHA: Yes, sir.

3 THE COURT: Either one of you want to take one last
4 look at it before I start reading?

5 MR. MARTIN: Your Honor, I will.

6 THE COURT: Why don't you review it with the
7 defendant, just make sure we're all on the same page.

8 MR. MARTIN: Thank you, your Honor.

9 (Off the record at 12:28 p.m.)

10 (Back on the record at 12:30 p.m.)

11 THE COURT: All good?

12 MR. MARTIN: Yes, your Honor.

13 THE COURT: All good?

14 DEFENDANT SYCHANTHA: Yes, your Honor.

15 THE COURT: And I'm going to start at page 27, is
16 that correct? Is that correct?

17 DEFENDANT SYCHANTHA: Yes, your Honor.

18 THE COURT: All right. So, Jen, whenever the jury is
19 ready.

20 MR. STEINGOLD: Your Honor, had you finished reading
21 page 26?

22 THE COURT: I thought I did.

23 I can read it over again.

24 MR. NORWOOD: You did conclude that page, your Honor.

25 THE COURT: April, can you --

1 COURT REPORTER: You did complete it.

2 THE COURT: Okay.

3 THE CLERK: All rise for the jury.

4 (JURY IN AT 12:31 p.m.)

5 THE CLERK: Please be seated.

6 THE COURT: So I'm going to continue reading the jury
7 instructions to you.

8 Could we start -- could you please turn to page 27
9 and let me know when you're ready?

10 All right. Now, some of the people who may have been
11 involved in these events are not on trial. This does not
12 matter. There is no requirement that all members of a
13 conspiracy be charged and prosecuted or tried together in one
14 proceeding. Nor is there any requirement that the names of the
15 other conspirators be known. An indictment can charge a
16 defendant with a conspiracy involving people whose names are
17 not known, as long as the Government can prove that the
18 defendant conspired with one or more of them. Whether they are
19 named or not does not matter.

20 Page 28, Actual and Constructive Possession.

21 Next, I want to explain something about possession.
22 The Government does not necessarily have to prove that the
23 defendant physically possessed the controlled substances for
24 you to find him guilty of this crime. The law recognizes two
25 kinds of possession - actual possession and constructive

1 possession. Either one of these, if proved by the Government,
2 is enough to convict.

3 To establish actual possession, the Government must
4 prove that the defendant had direct, physical control over the
5 controlled substances and knew that he had control of it.

6 To establish constructive possession, the Government
7 must prove that the defendant had the right to exercise
8 physical control over the controlled substances, and knew that
9 he had this right, and that he intended to exercise physical
10 control over the controlled substances, either directly or
11 through other persons.

12 For example, if you left something with a friend
13 intending to come back later and pick it up or intending to
14 send someone else to pick it up for you, you would have
15 constructive possession of it while it was in the actual
16 possession of your friend.

17 But understand that just being present where
18 something is located does not equal possession. The Government
19 must prove that the defendant had actual or constructive
20 possession of the controlled substances, and knew that he did,
21 for him -- for you to find him guilty of this crime. This, of
22 course, is all for you to decide.

23 Page 30, Joint Possession.

24 One more thing about possession. The Government does
25 not have to prove that the defendant was the only one who had

1 possession of the controlled substances. Two or more people
2 can together share actual or constructive possession over
3 property. And if they do, both are considered to have
4 possession as far as the law is concerned.

5 But remember that just being present with others who
6 had possession is not enough to convict. The Government must
7 prove that the defendant had either actual or constructive
8 possession of the controlled substances, and knew that he did,
9 for you to find him guilty of this crime. This, again, is all
10 for you to decide.

11 Although the indictment charges that a statute was
12 violated by acts that are connected by the word "and," it is
13 sufficient if the evidence establishes a violation of the
14 statute by any one of the acts charged. Of course, this must
15 be proved beyond a reasonable doubt.

16 Page 32, Inferring Required Mental State.

17 Next, I want to explain something about proving a
18 defendant's state of mind.

19 Ordinarily, there is no way that a defendant's state
20 of mind can be proved directly because no one can read another
21 person's mind and tell what that person is thinking.

22 But a defendant's state of mind can be proved
23 indirectly from the surrounding circumstances. This includes
24 things like what the defendant said, what the defendant did,
25 how the defendant acted, and any other facts or circumstances

1 in evidence that show what was in the defendant's mind.

2 That concludes --

3 We're on page 33.

4 That concludes the part of my instructions explaining
5 the elements of the crime. Next, I will explain some rules
6 that you must consider -- next, I will consider some rules that
7 you must use in considering some of the testimony and evidence.

8 Page 34.

9 A defendant has an absolute right not to testify or
10 present evidence. The fact that he did not testify or present
11 any evidence cannot be considered by you in any way. Do not
12 even discuss it in your deliberations.

13 Remember that it is up to the Government to prove the
14 defendant guilty beyond a reasonable doubt. It is not up to
15 the defendant to prove that he is innocent.

16 Opinion Testimony.

17 Everyone got their pencil or pen?

18 In the first paragraph, you're going to see the name
19 Jaclyn Iera.

20 Everyone see the name?

21 She did not testify, so cross her name out, okay?

22 Okay. Again, page 35, Opinion Testimony.

23 You have heard the testimony of narcotics trafficking
24 witness Daniel Christensen and chemists Heather Miller, Carrie
25 Gallagher, Alexandra Ambriz, Timothy Anderson, who testified as

1 opinion witnesses.

2 You do not have to accept the opinions of any of
3 these witnesses. In deciding how much weight to give them, you
4 should consider each witness' qualifications and how he or she
5 reached his or her conclusions. Also consider the other
6 factors discussed in these instructions for weighing the
7 credibility of witnesses.

8 Remember that you alone decide how much of a witness'
9 testimony to believe and how much weight it deserves.

10 Remember -- again, it repeats itself.

11 Remember that you alone decide how much of a witness'
12 testimony to believe and how much weight it deserves.

13 Page 36.

14 You have heard the testimony of John Tetreau. You
15 have also heard that the Government promised to and did move
16 for a reduction in his sentence in exchange for his
17 cooperation.

18 It is permissible for the Government to make such a
19 promise. But you should consider Mr. Tetreau's testimony with
20 more caution than the testimony of other witnesses. Consider
21 whether his testimony may have been influenced by the
22 Government's promise.

23 Do not convict the defendant based be based on the
24 unsupported testimony of such a witness, standing alone, unless
25 you believe his testimony beyond a reasonable doubt.

1 Page 37, Testimony of an Accomplice.

2 You've heard the testimony of Tammie Thompson, Asad
3 Malik, Ron Quizon, John Tetreau, Loren Omen, Jacob Webb -- did
4 -- Jacob Webb did not testify, correct?

5 MR. NORWOOD: Correct, your Honor.

6 THE COURT: Strike the name Jacob Webb.

7 And Dante Shavers.

8 You have also heard that they were involved in the
9 same crimes that the defendant is charged with committing. You
10 should consider their testimony with more caution than the
11 testimony of other witnesses.

12 Do not convict the defendant based on the unsupported
13 testimony of such a witness, standing alone, unless you believe
14 that the witness' testimony -- unless you believe the witness'
15 testimony beyond a reasonable doubt.

16 The fact that such a witness has pled guilty to a
17 crime is not evidence that the defendant is guilty, and you
18 cannot consider this against the defendant in any way.

19 Page 38, Transcription of Recordings.

20 You have heard some recordings that were received
21 into evidence, and you were shown some written transcripts of
22 these recordings.

23 Keep in mind that the transcripts are not evidence.
24 They were given to you only as a guide to help you follow what
25 was being said. Only the recordings themselves are the

1 evidence. If you noticed any differences between what you
2 heard on the recordings and what you read in the transcripts,
3 you must rely on what you heard, not what you read. And if you
4 could not hear or understand certain parts of the recordings,
5 you must ignore the transcripts as far as those parts are
6 concerned.

7 So, that's as far as we're going to go today, all
8 right? Tomorrow, we're going to start with the closings at
9 9:00, all right? At 9:00. And then when the closings are
10 concluded, I will finish reading the jury instruction packet to
11 you, starting at page 39, okay?

12 Everyone understand the procedure?

13 JURORS: Yes.

14 THE COURT: And again, you can't discuss the case,
15 correct?

16 JURORS: Correct.

17 THE COURT: All right. So enjoy your afternoon and
18 we'll see you upstairs at 8:30, and we'll start with the
19 closings right around 9:00.

20 THE CLERK: All rise for the jury.

21 (JURY OUT AT 12:42 p.m.)

22 THE COURT: They want to know the schedule as far as
23 tomorrow as far as leaving.

24 THE COURT: They'll be in deliberations.

25 THE CLERK: All day?

1 THE COURT: All day.

2 THE CLERK: You may be seated.

3 THE COURT: So should there be a conviction, possibly
4 there might be an issue with respect to Mr. Sychantha's access
5 to -- or it could be raised, right? You can also raise
6 whatever you want on appeal.

7 So I want to hand the Government and the defense a
8 series of emails.

9 MR. MARTIN: May I approach, your Honor?

10 THE COURT: Mr. Furtaw will hand it to you.

11 A series of emails that may shed some light on the
12 issue of access while at Livingston County Jail.

13 Let me see that document back again.

14 So a little update. So, as you can see, we've been
15 -- the Marshal service has been in contact, again, with
16 Sergeant Neil. And Sergeant Neil sent an email this morning at
17 7:40 -- 7:54 a.m. and indicates: I hope all is well. The
18 defendant was brought back from court and copies were made for
19 him for new material he received in court today. Defendant was
20 asked what time he needed his discovery material and he opted
21 not to view anything on the laptop. He informed the deputies
22 that he had -- he -- that all he needed was the copies he had
23 in possession to prepare for court today.

24 And then in an earlier email in this chain, it's
25 noted -- and this is an email from Lieutenant Asquith to the

1 Marshals, Tuesday, April 15th, at 3:00 p.m., noting: The
2 law library is in the kiosk in the units that he can access
3 any time that he is in the day room. Again, please let me
4 know. Thank you.

5 So I just wanted to share the emails between the
6 Marshal and Livingston that we received regarding the issue
7 of access, okay?

8 MR. NORWOOD: And, your Honor, if the Court will
9 allow, the Government just wants to make a brief record as
10 it relates to discovery and access with the defendant.

11 THE COURT: Sure.

12 MR. NORWOOD: Your Honor, just for the Court --
13 and this is more if the Court of Appeals had this issue.

14 On May the 12th of 2023, the Court appointed
15 Mr. David Lee to represent the defendant. At that time,
16 pursuant to orders of the Court, we did provide discovery to
17 the defendant and he had access with his counsel.

18 And on November the 15th of 2023, Mr. Steingold
19 was appointed. At that point, he also had full access to
20 the discovery that the Government had to provide, with the
21 exception of Jencks and the trial.

22 On September the 20th of 2024, the defendant
23 decided to represent himself. And throughout this period of
24 time, the Government has made available his discovery.

25 And so if there is any question as to whether he's

1 had access, the Government has provided it since May 12th,
2 2023, pursuant to the discovery order that was required.

3 THE COURT: Okay. Obviously, I need you to stick
4 around just so that we can firm up the verdict form, okay?

5 MR. NORWOOD: Absolutely, your Honor.

6 THE CLERK: All rise.

7 (Off the record at 12:50 p.m.)

8 (Back on the record at 1:11 p.m.)

9 THE CLERK: All rise. Court is back in session.

10 THE COURT: All right. Do I have the verdict form
11 that you wish the jury to consider?

12 MR. MARTIN: Yes, your Honor.

13 DEFENDANT SYCHANTHA: Yes, your Honor.

14 MR. STEINGOLD: Your Honor, I've reviewed this
15 with Mr. Sychantha, and he's in agreement.

16 THE COURT: Very good.

17 But there's a couple typos.

18 So if you look at page -- you have 51 at the
19 bottom, perhaps it should be 45, 46, and the last one 47.
20 And then were you at 54, 47A?

21 MR. NORWOOD: Yeah.

22 THE COURT: All right.

23 MR. MARTIN: Yes, your Honor.

24 THE COURT: Because we're going to give that to
25 the jurors. The original form should not have those

1 numbers. The one that -- foreperson will receive what the
2 original jury instruction pack -- should be one of four, two
3 of four, three of four, and four of four, okay, so there's
4 no issue regarding the verdict form.

5 And then in question 1A, under Count One, with
6 respect to Count One: Did the offense involve at least 500
7 grams or more, okay, and then if you jump over to Count
8 Three, it reads: Did the offense involve at least 500 grams
9 of a substance? It doesn't have the term or more. You
10 might want to have the consistency, if that's agreeable to
11 the defense.

12 MR. STEINGOLD: It's agreeable. They can take out
13 the "or more" or put it in Count Three. I think it reads
14 the same.

15 THE COURT: Right. I just think it should be
16 consistent.

17 MR. NORWOOD: Your Honor, if we just took out the
18 "or more" of 1A.

19 THE COURT: Yeah, maybe you might want to do that
20 because it's more consistent with the indictment.

21 MR. STEINGOLD: I agree.

22 THE COURT: And this is kind of trivial, but with
23 respect to Count Two, possession with intent to distribute a
24 controlled substance; not substances, okay?

25 So I guess with question 1A, take out the "or

1 more;" Count Two, question two, delete substances. And
2 change the numbering for the packet that the jury is going
3 -- for the verdict form that the jury is going to receive.

4 And then for the foreperson, the actual jury
5 verdict is going to be one of four, two of four, three of
6 four, and four of four, okay?

7 MR. NORWOOD: Yes, your Honor.

8 THE COURT: Are we all good?

9 MR. NORWOOD: Yes, your Honor.

10 THE COURT: Are you clear?

11 MR. NORWOOD: Yes, your Honor.

12 MR. STEINGOLD: Yes, your Honor.

13 THE COURT: Okay. So we're in agreement on the
14 verdict form, which is wonderful.

15 And just make the -- change the grammar a little
16 bit, okay?

17 MR. MARTIN: Thank you, your Honor.

18 MR. NORWOOD: Thank you, your Honor.

19 THE COURT: And then email it to me or Ms. McCoy,
20 and we will make the copies for the jurors and make sure
21 they get it tomorrow.

22 Again, run through it one more time.

23 And the jury instruction packet, don't redo the
24 jury instruction packet, okay? Just make a new verdict
25 form, first page, 45; second page, 46; third page, 47;

1 fourth page, 47A; Count One, question 1A, get rid of "or
2 more."

3 Then, Count Two, substance; not substances.

4 And then with the foreperson's verdict form,
5 again, one of four, two of four, three of four, four of
6 four.

7 Any questions?

8 MR. NORWOOD: No, your Honor. Thank you.

9 THE COURT: Okay. All good?

10 MR. STEINGOLD: All good, your Honor.

11 MR. NORWOOD: Yes.

12 THE COURT: Okay. We'll see you tomorrow morning
13 about 8:30.

14 MR. NORWOOD: Sounds good.

15 THE COURT: The courtroom will be open early if
16 you guys want to set up.

17 MR. MARTIN: Thank you, your Honor.

18 THE CLERK: Court is in recess.

19 (PROCEEDINGS CONCLUDED AT 1:18 p.m.)

20 * * * * *

21 **C E R T I F I C A T I O N**

22 I certify that the foregoing is a correct transcription
23 of the record of proceedings in the above-entitled matter.

24 s/ April A. Kurtz, CSR-7347, RPR, FCRR
25 April A. Kurtz, CSR-7347, RPR, FCRR
Official Court Reporter

10/31/2024
Date